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**April 8, 2016**

Freedom of Information Officer  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

**Re: Freedom of Information Act Request Re EPA's 2003 New Source Review Air Permitting Program  
Evaluation of Montana**

Dear Freedom of Information Officer:

This is a request under the Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, and relevant U.S. Environmental Protection Agency (EPA) regulations set forth in 40 C.F.R. Part 2, subpart A. I make this request on behalf of the Sierra Club and the Montana Environmental Information Center (MEIC). This request pertains to EPA's 2003 evaluation of Montana's New Source Review (NSR) construction permit program under the Clean Air Act. As discussed below, the Sierra Club and MEIC request a fee waiver.

**Records Requested**

In June of 2003, EPA conducted a review of the Montana Department of Environmental Quality's (MTDEQ's) New Source Review Construction Permitting Program, which EPA conducted as part of its obligation to oversee and review state programs implementing new source review permitting under the Clean Air Act. To the best of Sierra Club and MEIC's knowledge, it appears that this 2003 review was conducted by Catherine Collins and Christopher Ajayi as well as Mike Sewell of EPA's Office of Air Quality Planning and Standards. Pursuant to 40 C.F.R. Part 2, subpart A, the Sierra Club and MEIC request all draft and final summaries and reports submitted to the Montana Department of Environmental Quality or otherwise in EPA's files regarding this review of MTDEQ's implementation of its new source review construction permit program. To the extent possible, please provide electronic documents instead of paper documents.

**Exempt Records**

If EPA determines that any records may be withheld under FOIA's narrow exemptions, please identify each allegedly exempt record in writing, provide a brief description of that record, and explain the agency's justification for withholding it. This explanation should take the form of a Vaughn index, as described in Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir 1973), and related cases. If a document includes both exempt and non-exempt information, please provide those portions of the document that are not specifically exempted from disclosure. Finally, if a document does not exist, please indicate that in your written response.

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## Fee Waiver

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l), Sierra Club and MEIC hereby request a fee waiver for all fees associated with responding to this request because Sierra Club and MEIC seek this information in the public interest and will not benefit commercially from this request. If you do not waive the fees entirely, Sierra Club and MEIC request that you reduce them to the extent possible.

Sierra Club and MEIC meet all factors in EPA's fee waiver test, as demonstrated below. If this information is not sufficient to justify a fee waiver, please contact me for further specific documentation before deciding upon the waiver request.

### 1. Public Interest Factor

EPA regulations require that you furnish records without charge or at a reduced charge if you determine that:

disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

40 C.F.R. § 2.107(l)(1). In deciding whether the first factor – public interest – requirement is met, you should consider: the subject matter, the informative value, and whether and to what extent the disclosure will contribute to an understanding by the public of government activities. This request complies with each of the criteria that EPA weighs in making the public interest determination.

#### a. The request concerns the operations or activities of the government

This request concerns the law of air quality in the state of Montana. One of EPA's primary roles in implementing the Clean Air Act is to review and approve or disapprove state rules that are part of the state's plan for attaining and maintaining the NAAQS which include new source review construction permitting requirements. Further, EPA has an obligation to oversee and review state air permitting programs that it approved into the SIP. Such EPA reviews, therefore, bear upon the operations and activities of the government.

#### b. The disclosure is likely to significantly contribute to understanding of government operations or activities.

EPA's review of the implementation of Montana's new source review construction program and what issues EPA may have raised to MTDEQ regarding its implementation of its new source review construction program is essential to understanding MTDEQ's operations and activities with respect to the federal permitting requirements of the Clean Air Act.

#### c. The information will contribute to the understanding of the general public.

The requested information will contribute to the understanding of the general public. The public has a profound interest in the implementation of the permitting programs of the Clean Air Act, which is one of our nation's keystone environmental laws. Sierra Club and MEIC are particularly able to ensure that information about the Montana SIP will be disseminated to the general public. The Sierra Club is the nation's oldest and largest grassroots environmental organization, with nearly 600,000 members and hundreds of thousands more online activists and newsletter subscribers. Its website is highly trafficked



and Sierra Club media and communications reach hundreds of thousands of people through a radio show, an extensive online information system, web videos, and news reports. Sierra Club has a decades-long track record of effectively communicating with the public. Sierra Club and MEIC employees, experts and attorneys use available information to develop reports, media materials and litigation briefs that further educate the public and decision makers. In short, Sierra Club and MEIC are uniquely well positioned to analyze and publicize the information herein requested. Sierra Club and MEIC will make all documents publicly available.

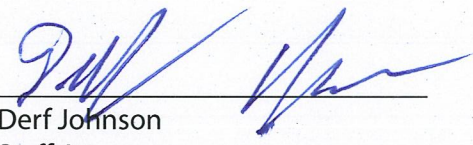
## **2. Commercial Interest Factor**

The Sierra Club is a nonprofit organization, registered under sections 501(c)(3) and 501(c)(4) of the tax code. MEIC is a non-profit organization registered under section 501(c)(3) of the tax code. Sierra Club and MEIC have no commercial, trade, or profit interests in this information. Sierra Club and MEIC seek to use this information solely to inform the public and to support advocacy efforts around air quality in Montana. Thus, there is no relevant commercial interest here, and thus the request is entirely in the public interest.

For the foregoing reasons, a fee waiver is warranted here.

## **Conclusion**

Thank you for your assistance with this request. If you have any questions, please do not hesitate to contact me.

  
Derf Johnson  
Staff Attorney  
Montana Environmental Information Center